



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 17, 1998

Ms. Linda R. Frank  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR98-1504

Dear Ms. Frank:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116315.

The City of Arlington (the "city") received a request for "documents regarding the multimillion dollar payment the city believes Southwestern Bell owes the city in relation to franchise fees." You submitted to this office for review representative samples of the documents that are responsive to the request.<sup>1</sup> You assert that these records are excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We note that although you asserted section 552.101, you did not explain the applicability of this exception. We will address your other arguments against disclosure.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You provided a copy of a filed complaint for declaratory action and injunctive relief, which shows that the city is involved in pending litigation. Our review of the documents indicates that the records are related to the underlying litigation. Thus, we agree that many of the documents at issue are protected from disclosure under section 552.103(a).<sup>2</sup> However, among the submitted

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

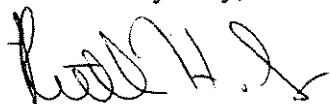
<sup>2</sup>We note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

documents is correspondence between the city and the opposing party. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Because section 552.103(a) is generally inapplicable to records that have been seen by the opposing party in the litigation, these records may not be withheld from disclosure under section 552.103(a).

Sections 552.107 and 552.111 also are inapplicable to the records that have been seen by the opposing party to the litigation. Section 552.107(1) protects from disclosure documents that are protected within the context of the attorney-client relationship. *See* Open Records Decision No. 574 (1990). Correspondence with third parties or documents disclosed to third parties is not generally within the protected attorney-client relationship. Section 552.111 protects from disclosure interagency or intraagency memoranda. However, section 552.111 does not protect information that has been disclosed to a third party. Gov't Code § 552.007; Open Records Decision No. 192 (1978) at 3 (governmental body may not make selective disclosure of internal memoranda). The information that has been seen by the opposing party to the litigation may not be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/nc

Ref: ID# 116315

Enclosures: Submitted documents

CC: Ms. Rani Cher Monson  
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(w/o enclosures)